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Crime prevention and criminal justice

Report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on the work of its first to seventh sessions

I. Introduction

1. In its resolution 55/61 of 4 December 2000, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime (resolution 55/25, annex I) was desirable; and decided to establish an ad hoc committee for the negotiation of such an instrument in Vienna at the headquarters of the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention (now known as the Office on Drugs and Crime).

2. In its resolution 56/260 of 31 January 2002, the General Assembly decided that the Ad Hoc Committee for the Negotiation of a Convention against Corruption should negotiate a broad and effective convention, which, subject to the final determination of its title, should be referred to as the "United Nations Convention against Corruption"; and requested the Ad Hoc Committee, in developing the draft convention, to adopt a comprehensive and multidisciplinary approach and to consider, inter alia, the following indicative elements: definitions; scope; protection of sovereignty; preventive measures; criminalization; sanctions and remedies; confiscation and seizure; jurisdiction; liability of legal persons; protection of witnesses and victims; promoting and strengthening international cooperation; preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds; technical assistance; collection, exchange and analysis of information; and mechanisms for monitoring implementation.

3. In its resolution 57/169 of 18 December 2002, the General Assembly noted the progress made by the Ad Hoc Committee, and urged the Ad Hoc Committee to endeavour to complete its work by the end of 2003.

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4. Also in its resolution 57/169, the General Assembly accepted with appreciation the offer made by the Government of Mexico to host a high-level political conference for the purpose of signing the convention; and decided to convene the conference for a period of three days before the end of 2003.

5. The Ad Hoc Committee held seven sessions, as follows: first session from 21 January to 1 February 2002; second session from 17 to 28 June 2002; third session from 30 September to 11 October 2002; fourth session from 13 to 24 January 2003; fifth session from 10 to 21 March 2003; sixth session from 21 July to 8 August 2003; and seventh session from 29 September to 1 October 2003.

6. The present report is submitted to the General Assembly at its fifty-eighth session in accordance with the mandate of the Ad Hoc Committee and pursuant to Assembly resolutions 56/260 and 57/169, in order to apprise the Assembly of the work of the Ad Hoc Committee in implementing its mandate and to submit its recommendations to the Assembly for consideration and action.

II. Background

7. In its resolution 54/128 of 17 December 1999, the General Assembly directed the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime to incorporate into the draft United Nations Convention against Transnational Organized Crime measures against corruption linked to organized crime, including provisions regarding the sanctioning of acts of corruption involving public officials; and requested the Ad Hoc Committee, using such time as its schedule permitted and with extrabudgetary resources provided for that purpose, to explore the desirability of an international instrument against corruption, either ancillary to or independent of the Convention, to be developed after the finalization of the Convention and the three additional instruments referred to in resolution 53/111 and to present its views to the Commission on Crime Prevention and Criminal Justice.

8. In its resolution 55/61, the General Assembly requested the Secretary-General to convene, upon completion of the negotiation of the United Nations Convention against Transnational Organized Crime and the related protocols, an intergovernmental open-ended expert group to examine and prepare, on the basis of the report of the Secretary-General and of the recommendations of the Commission at its tenth session, draft terms of reference for the negotiation of the future legal instrument against corruption.

9. In its resolution 55/188 of 20 December 2000, the General Assembly reiterated its request to the Secretary-General, as contained in resolution 55/61, to convene an intergovernmental open-ended expert group to examine and prepare draft terms of reference for the negotiation of the future legal instrument against corruption, and invited the expert group to examine the question of illegally transferred funds and the return of such funds to the countries of origin.

10. The Economic and Social Council, on the recommendation of the Commission on Crime Prevention and Criminal Justice at its tenth session, adopted resolution 2001/13 of 24 July 2001, entitled "Strengthening international cooperation in preventing and combating the transfer of funds of illicit origin,

derived from acts of corruption, including the laundering of funds, and in returning such funds". In that resolution, the Council requested the intergovernmental open-ended expert group referred to in General Assembly resolution 55/61 to consider, within the context of its mandates, the following issues, inter alia, as possible items of work to be included in the draft terms of reference for the negotiation of a future legal instrument against corruption: (a) strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, including the laundering of funds derived from acts of corruption, and promoting ways and means of enabling the return of such funds; (b) developing the measures necessary to ensure that those working in banking systems and other financial institutions contribute to the prevention of the transfer of funds of illicit origin derived from acts of corruption, for example, by recording transactions in a transparent manner, and to facilitate the return of those funds; (c) defining funds derived from acts of corruption as proceeds of crime and establishing that an act of corruption may be a predicate offence in relation to money-laundering; and (d) establishing criteria for determining the appropriate countries to which funds, referred to above, should be returned and the appropriate procedures for such return.

11. Pursuant to General Assembly resolution 55/61, the Meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption was held in Vienna from 30 July to 3 August 2001. The Intergovernmental Open-Ended Expert Group recommended to the Assembly, through the Commission on Crime Prevention and Criminal Justice and the Economic and Social Council, the adoption of a draft resolution on the terms of reference for the negotiation of an international legal instrument against corruption. The draft resolution was subsequently adopted by the Assembly as resolution 56/260 of 31 January 2002.

12. In its resolution 56/260, the General Assembly accepted with gratitude the offer of the Government of Argentina to host an informal preparatory meeting of the ad hoc committee established pursuant to resolution 55/61, prior to its first session.

13. The Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption was held in Buenos Aires from 4 to 7 December 2001. The Secretariat invited Governments to submit proposals concerning the substantive content of the draft convention against corruption.

III. Proceedings of the Ad Hoc Committee

A. First session

14. During the first session of the Ad Hoc Committee for the Negotiation of a Convention against Corruption, held in Vienna from 21 January to 1 February 2002, 20 meetings were held. The first session of the Ad Hoc Committee was attended by representatives of 97 States. Also attending the first session were observers for United Nations Secretariat units, United Nations bodies and research institutes, specialized agencies and other organizations of the United Nations system, institutes of the United Nations Crime Prevention and Criminal Justice Programme network, intergovernmental organizations and non-governmental organizations.

15. The Ad Hoc Committee elected the following officers by acclamation:

Chairman:	Héctor Charry Samper (Colombia)
Vice-Chairmen:	Thomas Stelzer (Austria) Karoly Bard (Hungary)[1] Muhyieddeen Touq (Jordan) Ivan Leslie Collendavelloo (Mauritius) Abdulkadir Bin Rimdap (Nigeria) Victor G. Garcia III (Philippines) Javier Paulinich (Peru) Peter Redmond Jenkins (United Kingdom of Great Britain and Northern Ireland)
Rapporteur:	Anna Grupinska (Poland)

16. The bureau of the Ad Hoc Committee met several times during the first session to consider matters pertaining to the organization of work.

17. The Chairman informed the Ad Hoc Committee that its bureau had decided on the following arrangements, in order to share the work involved in the negotiation of the draft convention:

Preamble and final clauses: Chairman;

General provisions: United Kingdom, assisted by Hungary;

Preventive measures, including the code of conduct contained in the annex: Jordan, assisted by Mauritius;

Articles 19-39, concerning criminalization and liability of legal persons of the draft text: Hungary, assisted by United Kingdom;

Articles 40-50, concerning sanctions and remedies, confiscation and seizures, protection of witnesses and victims, law enforcement cooperation and jurisdiction: Philippines, assisted by Nigeria;

International cooperation: Nigeria, assisted by Peru;

Transfer of funds of illicit origin: Peru, assisted by Austria;

Technical assistance: Mauritius, assisted by Jordan;

Follow-up mechanism: Austria, assisted by Philippines.

18. The bureau had reached this decision on the following understanding:

(a) The negotiation process would remain under the authority of the Chairman;

(b) The Vice-Chairmen would take charge of a particular issue for the purpose of increasing participation and teamwork, as well as of ensuring the advancement of the negotiation process. In that context, the Vice-Chairmen might chair either the plenary or informal consultations on the specific subject matter assigned to them, including engaging interested delegations in informal dialogue in order to attain consensus as necessary;

[1] Subsequently, the Ad Hoc Committee was informed that Mr. Bard would be unable to attend the sessions of the Ad Hoc Committee and perform his functions as Vice-Chairman. The Ad Hoc Committee decided to replace Mr. Bard with István Horváth (Hungary).

(c) The Vice-Chairman mentioned first under each subject would take the lead, supported by the Vice-Chairman mentioned second.

19. The Chairman expressed the gratitude of the Ad Hoc Committee to the Government of Argentina for having acted as host to the Informal Preparatory Meeting of the Ad Hoc Committee, held in Buenos Aires in December 2001. He invited the representative of Argentina to report on the results of the Informal Preparatory Meeting.

20. The representative of Argentina informed the Ad Hoc Committee that 56 States had attended the Informal Preparatory Meeting and that 26 proposals had been submitted for consideration. He stressed the functional nature of the meeting, which had aimed at consolidating the various proposals with a view to avoiding duplication. He underlined that the compilation of a consolidated draft text in Buenos Aires should not be perceived as an impediment to submitting further proposals during the negotiations.

21. Before inviting delegations to make general statements, the Chairman encouraged delegations to use the opportunity of their presence at the first session of the Ad Hoc Committee to engage in dialogue, with a view to further streamlining the text of the draft convention.

22. The Chairman also invited delegations to state their positions in relation to specific draft provisions, rather than trying to summarize such views and positions on the entire broad array of matters covered by the draft convention in a general statement.

23. At the 3rd meeting of the Ad Hoc Committee, on 22 January, the Chairman recalled that, according to its terms of reference, the Ad Hoc Committee was to take into consideration the contributions of non-governmental organizations and civil society, in accordance with United Nations rules and following the practice established by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime. The Ad Hoc Committee was a body established by the General Assembly and, consequently, followed the rules of procedure of subsidiary bodies of the Assembly.

24. The Chairman indicated that the previous Ad Hoc Committee had admitted to its plenary meetings non-governmental organizations in consultative status with the Economic and Social Council. Informal consultations of every kind (including small working or drafting groups) were designated "closed meetings"; that is, only government representatives were admitted. In plenary meetings, observers for non-governmental organizations were allowed to make statements once all representatives had spoken, time permitting. Observers for non-governmental organizations wishing to distribute documents were asked to bring sufficient copies of those documents, which would be placed at the documents distribution counter.

25. In view of the nature of the subject matter, it was foreseen that several non-governmental organizations not having consultative status with the Economic and Social Council would approach the Secretariat with requests to submit documentation, participate in the sessions or both. In addition, it was expected that the private sector and national independent bodies would express similar interest.

26. The bureau proposed that the Ad Hoc Committee authorize it to review such requests and decide on a case-by-case basis, within the parameters determined

pursuant to General Assembly resolution 56/260. The Ad Hoc Committee approved the proposal submitted by the bureau.

27. The Chairman informed the Ad Hoc Committee that the bureau had received the first such request, from Transparency International, and had decided to allow that non-governmental organization to attend the Committee as an observer.

28. The Ad Hoc Committee began the first reading of the draft convention against corruption. Having deferred discussion on the preamble at the recommendation of the Chairman, the Ad Hoc Committee completed the first reading of articles 1-39 of the draft convention, basing its consideration of the articles on the consolidated text contained in document A/AC.261/3 (Parts I and II).

29. At its 20th meeting, the Ad Hoc Committee approved the proposal of Peru regarding the organization of a workshop on the question of asset recovery and authorized the Secretariat to organize that workshop for one day during the second session of the Ad Hoc Committee. The purpose of the workshop would be to provide interested participants with technical information and specialized knowledge on the complex issues involved in the question of asset recovery. Therefore, the workshop would not lead to any formal conclusion.

30. The report of the Ad Hoc Committee on its first session was issued as document A/AC.261/4 and Corr.1.

B. Second session

31. During the second session of the Ad Hoc Committee, held in Vienna from 17 to 28 June 2002, 20 meetings were held. The second session of the Ad Hoc Committee was attended by representatives of 123 States. Also attending the second session were observers for United Nations Secretariat units, regional commissions and specialized agencies, other intergovernmental organizations and non-governmental organizations.

32. At its second session, the Ad Hoc Committee continued and completed the first reading of the draft convention against corruption. It based its deliberations on the consolidated text of the draft convention contained in document A/AC.261/3 (Parts II-IV) and on proposals and contributions made by Governments. Suggestions for consolidating text and proposals for new or amended provisions, together with specific observations on either the existing text or the substance of new provisions proposed by delegations at the second session, were included in a revised version of the draft convention (A/AC.261/3/Rev.1/Add.1).

33. At the opening of the second session, the Chairman stated that the Ad Hoc Committee had begun its work in the best possible spirit but had to maintain the same vigorous pace at its second session in order to remain on track towards the implementation of its mandate. The Chairman emphasized that the political will of States was the key to the success of the Ad Hoc Committee and mentioned the question of asset recovery, among other issues, which would serve as an indicator of the political will to join forces in order to protect the common good.

34. Statements were made by the President of the General Assembly at its fifty-sixth session, as well as by the representative of Spain on behalf of the States

Members of the United Nations that are members of the European Union and the representative of Nigeria on behalf of the States Members of the United Nations that are members of the Group of African States. The Director-General of the United Nations Office at Vienna and Executive Director of the Office for Drug Control and Crime Prevention also addressed the Ad Hoc Committee.

35. The report of the Ad Hoc Committee on its second session was issued as document A/AC.261/7.

Technical workshop on asset recovery

36. At its first session, the Ad Hoc Committee had approved the proposal of Peru regarding the organization of a workshop on the question of asset recovery and had authorized the Secretariat to organize that workshop for one day during the second session of the Ad Hoc Committee.

37. A one-day technical workshop on asset recovery was held on 21 June 2002, during the second session of the Ad Hoc Committee.

38. The purpose of the workshop was to provide interested participants with technical information and specialized knowledge on the complex issues involved in the question of asset recovery.

39. The Secretariat invited 10 panellists, selected with due regard for equitable geographical representation, to make presentations and lead the discussion. The bureau of the Ad Hoc Committee had indicated that the panellists were to be selected and invited in their individual capacity. In that connection, the Secretariat drew on information provided by Governments in response to its request made pursuant to Economic and Social Council resolution 2001/13.

40. The discussion at the workshop was structured along major thematic areas corresponding to the phases of a hypothetical case study. Each phase of the case study was assigned to panellists, who were asked to make brief presentations at the workshop. The panellists discussed recovery options, tracing and seizure, diplomatic or sovereign immunities, assets not directly derived from corruption, bank secrecy, the scope of assets to be recovered, tax evasion, the case of unreliable and inoperable safeguards against corruption, requests for assistance in seeking recovery, dual criminality, bona fide third parties, transparency, preventive and deterrent measures, the insufficiency of the national legislation and the lack of specialized skills and knowledge on the part of judges and prosecutors in developing countries.

41. Following the presentations and comments by other panellists, questions from the floor and discussion were invited and further issues were raised. Those included locus standi; the identification of parties and the roles of individual victims in civil proceedings; the role of requested States; limitation periods for civil action; the different standards of proof in civil and criminal cases and "double jeopardy"; and politically motivated claims. A number of possible measures were suggested by panellists or delegates, including controls on the use of anonymous or "shell" companies; subjecting the proceeds of high-level corruption to forfeiture and recovery whether or not a crime existed when they were generated; subjecting the proceeds of tax evasion to recovery; enhancing the powers of other States to block

transfers where corruption made the source State unwilling or unable to do so; and the question of whether the convention should contain a single unified recovery scheme or create a range of options.

42. Furthermore, additional comments were also made on: (a) the need to address the problem of tracing and seizing illicit proceeds to transferees after the death of a corrupt official where no criminal prosecution was possible; (b) the need to establish more uniform criteria for evidentiary standards with respect to freezing and seizure of assets of illicit origin, including perhaps a model statute for such matters; (c) the need to establish uniform standards for the sharing of assets between cooperating States with respect to seized assets of illicit origin; and (d) the possibility of making greater use of rewards for information leading to the return of assets of illicit origin or using civil *qui tam* litigation whereby private citizens or "whistle-blowers" could sue corrupt officials and others who defrauded the Government on behalf of the State and then be rewarded with a portion of the assets of illicit origin recovered on behalf of the State.

43. The programme of the workshop appeared in a note by the Secretariat (A/AC.261/6 and Add.1) and the hypothetical case study was presented in the annex to that note. In addition, a global study on the transfer of funds of illicit origin, especially funds derived from acts of corruption (A/AC.261/12), which was submitted to the Ad Hoc Committee at its fourth session, in January 2003, benefited from the presentations by experts as well as from the results of the discussion during the workshop.

C. Third session

44. During the third session of the Ad Hoc Committee, held in Vienna from 30 September to 11 October 2002, 20 meetings were held. The third session of the Ad Hoc Committee was attended by representatives of 123 States. Also attending the third session were observers for specialized agencies and related organizations of the United Nations system, other intergovernmental organizations and non-governmental organizations.

45. At its third session, the Ad Hoc Committee completed the second reading of articles 1, 2 (subparagraphs (a), (d), (f), (n) and (o)), 4 bis-19 bis, 21-29 and 31 of the draft convention. It based its deliberations on the consolidated text of the draft convention contained in document A/AC.261/3/Rev.1 and Corr.1 and on proposals and contributions made by Governments.

46. At the opening of the session, the Chairman recalled the progress achieved by the Ad Hoc Committee at its first two sessions. He called upon delegations to remain flexible, be innovative and ready to compromise and make every effort to reach consensus during the second reading of the draft convention, while maintaining the same vigorous pace and high standard of quality. He also recalled the spirit of cooperation that had prevailed during the first reading, adding that at no time had any delegation taken a position that ruled out the possibility of reaching agreement or indicated that there was an issue on which a compromise could not be reached. The Chairman then mentioned some of the issues that would require delegations to demonstrate a spirit of cooperation, such as the question of whether

to include corruption in the private sector in the draft convention, and also stated that the Ad Hoc Committee should pay special attention to the issue of prevention.

47. Statements were made by the representative of Argentina on behalf of the States Members of the United Nations that are members of the Group of Latin American and Caribbean States and the Minister of Foreign Affairs of Nigeria. The Director-General of the United Nations Office at Vienna and Executive Director of the Office for Drug Control and Crime Prevention also addressed the Ad Hoc Committee.

48. On the recommendation of the representative of the United Kingdom, the Ad Hoc Committee requested the Secretariat to prepare for its fourth session a paper containing a factual account of provisions of United Nations and regional conventions related to follow-up or implementation mechanisms. The representative of Peru recommended that the submission of the Secretariat be in the form of a conference room paper.

49. In closing the session, the Chairman referred to the fact that the "rolling text" emerging from the second reading included a number of square brackets. The bureau of the Ad Hoc Committee felt that the use of square brackets was only for presentation reasons and had no other significance. The Chairman also expressed his concern at the repeated reference in the draft text of the convention to the conformity of its provisions with domestic law. In his view, such references should be the exception rather than the norm, because international law was not meant to be a mere reflection of national law. Further, the Chairman expressed the view that the Ad Hoc Committee had to work earnestly to avoid the perception that some proposals might create of reducing the scope of the new convention. In that connection, the Chairman recalled General Assembly resolution 56/260, in which the Assembly had requested the Ad Hoc Committee to develop a broad and effective convention, following a comprehensive and multidisciplinary approach.

50. The report of the Ad Hoc Committee on its third session was issued as document A/AC.261/9.

D. Fourth session

51. During the fourth session of the Ad Hoc Committee, held in Vienna from 13 to 24 January 2003, 20 meetings were held. The fourth session of the Ad Hoc Committee was attended by representatives of 117 States. Also attending the fourth session were observers for United Nations Secretariat units, United Nations bodies and research institutes, specialized agencies and other organizations of the United Nations system, institutes of the United Nations Crime Prevention and Criminal Justice Programme network and intergovernmental and non-governmental organizations.

52. At its fourth session, the Ad Hoc Committee continued and completed the second reading of the draft Convention. It based its deliberations on the consolidated text of the draft convention contained in documents A/AC.261/3/Rev.1/Add.1 and A/AC.261/3/Rev.2 and on proposals and contributions made by Governments.

53. At the opening of the session, the Chairman recalled the good progress achieved by the Ad Hoc Committee at its first three sessions and also called upon delegations to remain flexible, be innovative, be ready to compromise and make extra efforts to complete the second reading of the rest of the draft text at the fourth session, while endeavouring not to lower the high standard of quality of the draft convention. The Chairman then drew the special attention of the Ad Hoc Committee to some issues, such as the definition of the term "corruption", corruption in the private sector, the question of asset recovery and the monitoring mechanism.

54. Statements were made by the following: the representative of Cuba, on behalf of the States Members of the United Nations that are members of the Group of Latin American and Caribbean States; the Minister of Justice of Peru; and the Minister of Control of the State, Inspections, the Fight against Poverty and the Fight against Corruption of Gabon.

55. In closing the session, the Chairman called upon all delegates to reformulate their positions during the intersessional period and to determine how much room there was for compromise, so that the Ad Hoc Committee could achieve its task of delivering to the international community a broad, comprehensive, practical and functional global convention. He also emphasized the importance of both making advance preparations in order to arrive at solutions acceptable to all and trying to avoid putting forward new proposals at the present stage. The Chairman invited the Ad Hoc Committee to focus on proposing the amendments necessary to achieve consensus.

56. The report of the Ad Hoc Committee on its fourth session was issued as document A/AC.261/13.

E. Fifth session

57. The Ad Hoc Committee held its fifth session in Vienna from 10 to 21 March 2003, during which it held 20 plenary meetings and 10 parallel meetings of informal consultations with simultaneous interpretation in the six official languages of the United Nations. The fifth session of the Ad Hoc Committee was attended by representatives of 114 States. Also attending the fifth session were observers for United Nations Secretariat units, United Nations bodies and research institutes, specialized agencies and other organizations of the United Nations system, institutes of the United Nations Crime Prevention and Criminal Justice Programme network, intergovernmental organizations and non-governmental organizations.

58. During the fifth session of the Ad Hoc Committee, the Chairman made a statement in which he recalled the considerable progress achieved by the Ad Hoc Committee at its first four sessions, during which the first and second readings of the draft United Nations Convention against Corruption had been completed. He emphasized that, as the Ad Hoc Committee was to begin the third and final reading of the draft convention, the time had come to forge agreements, reach consensus and close the discussions on the various articles. He called upon delegations to remain flexible, listen to each other, be innovative and be ready to compromise, making concessions if necessary.

59. The Chairman then emphasized that the purpose of the informal consultations was to allow the Ad Hoc Committee to explore further issues that would require attention and to lay the ground for final agreement. While being aware of the fact that parallel meetings would increase the workload of delegations and put a strain on the smaller delegations, he stressed the considerable potential of that method for bringing the Ad Hoc Committee closer to fulfilling its mandate to complete its work by the end of 2003. He therefore called upon all delegations to approach the informal consultations in the same spirit of cooperation as had prevailed during the previous sessions of the Ad Hoc Committee.

60. The Director-General of the United Nations Office at Vienna and Executive Director of the United Nations Office on Drugs and Crime expressed his appreciation for the work of the Ad Hoc Committee, including the wealth of proposals that had been made, which demonstrated how important taking action against corruption had become all over the world. He also commended the spirit of cooperation shown by the various delegations, which would be the best guarantor of the success of the future convention. He praised the rapid progress made and the exceptionally high level of attendance at the sessions of the Ad Hoc Committee.

61. The Executive Director noted that the attention of Governments, international organizations and civil society was focused on the successful completion of the negotiations and on the impact that the future convention would have on collective action against corruption. The new convention would offer significant opportunities for all countries to pursue and attain sustainable development and realize their full potential.

62. The Executive Director stated that the time had come to develop a road map that would enable the Ad Hoc Committee to complete its task by the end of 2003, pursuant to General Assembly resolution 56/260. He suggested that certain signposts should be included on the road map, such as agreement on the articles on criminalization, agreement on most of the definitions and consolidated agreement on the chapter on international cooperation.

63. Statements were also made by the following: the representative of Brazil, speaking on behalf of the States Members of the United Nations that are members of the Group of 77 and China; the representative of Greece, speaking on behalf of the States Members of the United Nations that are members of the European Union, as well as the acceding countries (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) and the associate countries (Bulgaria, Romania and Turkey); the representative of Cuba, speaking on behalf of the States Members of the United Nations that are members of the Group of Latin American and Caribbean States; and the representative of the Syrian Arab Republic, speaking on behalf of the States Members of the United Nations that are members of the Group of Arab States.

64. At its fifth session, the Ad Hoc Committee considered articles 19-50, 1-3, 50 bis-59 and 73-77, in that order. It based its deliberations on the consolidated text contained in document A/AC.261/3/Rev.3 and on proposals and contributions made by Governments.

65. The Ad Hoc Committee provisionally approved the following: article 1, subparagraph (a); article 2, subparagraphs (f), (h), (j) and (k); article 19 (subject to the resolution of an issue relating to the definition of "public official" contained in

article 2, subparagraph (a)); article 22; article 33 (except para. 2 (b)); article 38; article 38 bis; article 38 ter; article 40 (subject to a decision on whether to retain the phrase "offences covered by this Convention" or replace it with the phrase "offences established in accordance with this Convention"); article 40 bis; article 42 (except para. 3 and subject to a decision on whether to retain the phrase "offences covered by this Convention" or replace it with the phrase "offences established in accordance with this Convention"); article 42 bis; article 43 (subject to a decision on whether to retain the phrase "offences covered by this Convention" or replace it with the phrase "offences established in accordance with this Convention"); article 43 bis (subject to a decision on whether to retain the phrase "offences covered by this Convention" or replace it with the phrase "offences established in accordance with this Convention"); articles 44-46; articles 48-51 (subject to a decision on whether to use the phrase "offences covered by this Convention" or retain the phrase "offences established in articles [...] of this Convention" in para. 2 and except for paras. 3 and 4); article 52; article 53 (except for paras. 3 (j) and (k) and 9); articles 54-56; article 59; and articles 73-75.

66. In closing the session, the Chairman expressed his gratitude to delegations for their dedication to the work of the Ad Hoc Committee and emphasized that the excellent progress achieved was a positive indication that the Ad Hoc Committee could complete its work at its next session. He called upon the Ad Hoc Committee to strike a balance among the various components of the draft convention that would satisfy all countries. He also invited all delegations to re-examine how much room there was for compromise and called for an extra measure of flexibility to overcome any difficulties at the final stage of the negotiations. He emphasized that the future convention must be broad, pragmatic and ratifiable. He also stressed the need to strengthen existing anti-corruption measures, as well as to send a clear message to the international community regarding the seriousness of the collective commitment to comply with the mandate of the General Assembly.

67. The report of the Ad Hoc Committee on its fifth session was issued as document A/AC.261/16.

Informal consultations

68. The Ad Hoc Committee decided that informal consultations organized during the session would be devoted to considering chapters II and V of the draft convention. The results of the informal consultations appeared in document A/AC.261/L.196 and Add.1.

F. Sixth session

69. The Ad Hoc Committee held its sixth session in Vienna from 21 July to 8 August 2003, during which it held 37 plenary meetings. The sixth session of the Ad Hoc Committee was attended by representatives of 128 States. Also attending the sixth session were observers for United Nations Secretariat units, United Nations bodies and research institutes, specialized agencies and other organizations of the United Nations system, institutes of the United Nations Crime Prevention and Criminal Justice Programme network, intergovernmental organizations and non-governmental organizations.

70. At the beginning of the sixth session, the Chairman made a statement in which he expressed his optimism that the Ad Hoc Committee would successfully complete the negotiation process at that session. He recalled the extensive progress made at the past five sessions, during which the Ad Hoc Committee had gone through the draft convention three times and had managed to reach preliminary agreement on a number of provisions, and encouraged delegations to use the extended final session productively. The Chairman called upon delegations to remain flexible, listen to each other and be innovative and ready to compromise, making concessions if necessary.

71. The Chairman recalled General Assembly resolution 56/260, in which the Assembly had asked the Ad Hoc Committee to draft a broad and effective convention. In order to fulfil that mandate, the Chairman emphasized that the future convention must be comprehensive, contain clear provisions, reinforce the existing national and international laws against corruption and set practical standards to strengthen the global fight against corruption.

72. The Chairman stated that he was heartened by the higher rate of attendance at the sixth session and by the presence of delegates from many least developed countries. On behalf of the Ad Hoc Committee, he thanked the Governments that had made the attendance of least developed countries possible through voluntary contributions.

73. Statements were also made by the following: the representative of Guatemala, speaking on behalf of the States Members of the United Nations that are members of the Group of 77 and China, as well as on behalf of the States Members of the United Nations that are members of the Group of Latin American and Caribbean States; the representative of Zimbabwe, speaking on behalf of the States Members of the United Nations that are members of the Group of African States; the representative of Italy, speaking on behalf of the States Members of the United Nations that are members of the European Union, as well as the acceding countries (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) and the associate countries (Bulgaria, Romania and Turkey); and the representative of the Syrian Arab Republic, speaking on behalf of the States Members of the United Nations that are members of the Group of Arab States.

74. During its sixth session, the Ad Hoc Committee considered the remaining provisions of the draft convention. It based its deliberations on the consolidated text contained in documents A/AC.261/3/Rev.4 and A/AC.261/L.232 and Add.1 and on proposals and contributions made by Governments.

75. The Ad Hoc Committee provisionally approved the following: article 1, subparagraphs (b) and (c); article 2, subparagraphs (a), (c), (d), (g) and (i) and the deletion of paragraphs (b), (e) and (l); article 4, paragraph 1; the deletion of article 4 bis; article 5; article 5 bis; article 6; article 6 bis; articles 7-9; article 9 bis; the deletion of article 10; articles 11-14; article 19 bis; articles 21-25; the deletion of article 26; the deletion of article 28; article 32; the insertion of a new article 32 bis; article 33, paragraph 2 (b); article 39; article 40, paragraph 7 (b); article 50 bis; article 51, paragraphs 2-4; article 53, subparagraphs (j) and (k) of paragraph 3; article 64; article 65; article 67; article 67 bis; article 60; the insertion of a new article 60 bis; the deletion of article 68; article 61; the deletion of article 62; article 66; article 76; the deletion of article 76 bis; article 77; and the deletion of article 79.

76. In connection with the deletion of article 79, the representative of the Netherlands expressed his wish that the report of the Ad Hoc Committee reflect his statement to the effect that the future convention should not affect the rights and undertakings derived from international covenants on human rights.

77. Following the decision of the Ad Hoc Committee to delete article 10, the representatives of Benin, Burkina Faso, Cameroon and Senegal expressed their wish that the report of the Ad Hoc Committee reflect their preference for a separate binding article on the financing of political parties; however, because of their willingness to accommodate the concerns of other delegations and to ensure the successful finalization of the draft convention, they had felt compelled to join the consensus on the deletion of article 10 and the incorporation of a new paragraph in article 6.

78. At the end of its sixth session, the Ad Hoc Committee decided to hold another session in September 2003, during which it would concentrate on outstanding matters in the draft convention, with a view to finalizing the text and submitting it to the General Assembly for consideration and action at its fifty-eighth session, in accordance with Assembly resolution 56/260. The bureau of the Ad Hoc Committee would decide on the exact dates and duration of the seventh session.

79. In closing the session, the Chairman expressed regret that lack of time had prevented the Ad Hoc Committee from completing the negotiation process at its sixth session, as it had intended to do, especially in view of the small number of outstanding matters and the fact that the Ad Hoc Committee had been very close to reaching consensus on those matters. The Chairman expressed his gratitude to the delegations for their dedication and willingness to find solutions acceptable to all and compromise in order to achieve consensus. He also confirmed the understanding that, at its seventh session, the Ad Hoc Committee would be focusing on reaching agreement on the remaining provisions of the draft text, building on the consensus achieved during its fifth and sixth sessions, and would not dwell on matters provisionally approved.

80. The report of the Ad Hoc Committee on its sixth session was issued as document A/AC.261/22.

G. Seventh session

81. At its seventh session, held in Vienna from 29 September to 1 October 2003, the Ad Hoc Committee held six plenary meetings. The seventh session was attended by representatives of 114 States. Also attending the seventh session were observers for United Nations Secretariat units, United Nations bodies and research institutes, specialized agencies and other organizations of the United Nations system, institutes of the United Nations Crime Prevention and Criminal Justice Programme network and intergovernmental and non-governmental organizations.

82. The Officer-in-Charge of the Division for Treaty Affairs of the United Nations Office on Drugs and Crime opened the session by recalling the recent sad event of the passing away of Héctor Charry Samper (Colombia), Chairman of the Ad Hoc Committee. The Officer-in-Charge asked the Ad Hoc Committee to observe a moment of silence in memory of Mr. Charry Samper.

83. The Officer-in-Charge recalled that Mr. Charry Samper had applied his vast experience and profound knowledge, together with his passion for justice and the rule of law, with generosity and commitment in his work as Chairman of the Ad Hoc Committee. He had cared deeply about the future convention. He had left no position or concern unheeded. He had shared the tasks and had stood at the side of all members of the bureau, supporting and guiding whenever necessary.

84. The Officer-in-Charge informed the Ad Hoc Committee that its bureau had met on 25 September to consider the procedural matter that had arisen as a result of the untimely death of its Chairman. In honour of his memory, the bureau had decided to recommend to the Ad Hoc Committee the following:

(a) That the composition of the bureau of the Ad Hoc Committee remain unchanged;

(b) That the representative of Jordan be asked to serve as Acting Chairman of the Ad Hoc Committee at its seventh session.

85. The bureau had shared its recommendations with the chairmen of the regional groups on 25 September.

86. At the beginning of its seventh session, the Ad Hoc Committee approved the recommendations of the bureau.

87. The Acting Chairman of the Ad Hoc Committee, speaking on behalf of the bureau, also expressed his deepest sorrow and sadness at the death of Mr. Charry Samper and conveyed condolences to his family and to the Government of Colombia. The Acting Chairman underlined that the Ad Hoc Committee was close to fulfilling the mandate given by the General Assembly in its resolution 56/260, in which it had asked the Ad Hoc Committee to draft a broad and effective convention. The future convention would be of high quality and would be worded in a way that would make it possible for States to ratify it as quickly as possible. It would reinforce existing national and international laws against corruption and set practical standards to strengthen the global fight against corruption. He called upon delegations to continue to be flexible and cooperative during the negotiations on the final text of the draft convention.

88. Statements were also made by the following: the representative of Chile, speaking on behalf of the States Members of the United Nations that are members of the Group of Latin American and Caribbean States; the representative of Brazil, speaking on behalf of the States Members of the United Nations that are members of the Group of 77 and China; the representative of Italy, speaking on behalf of the States Members of the United Nations that are members of the European Union, as well as the acceding countries (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) and the associate countries (Bulgaria, Romania and Turkey); the representative of the Syrian Arab Republic, speaking on behalf of the States Members of the United Nations that are members of the Group of Arab States; the representative of Tunisia, speaking on behalf of the States Members of the United Nations that are members of the Group of African States; the Minister of Justice of the Philippines; and the representatives of Ecuador, China, Algeria and Guatemala.

89. During its seventh session, the Ad Hoc Committee considered the remaining provisions of and finalized the draft convention. It based its deliberations on the

consolidated text contained in document A/AC.261/3/Rev.5 and on proposals and contributions submitted by Governments. The Ad Hoc Committee also had before it revisions of and amendments to the draft convention prepared during informal consultations at the request of the Chairman.

90. At its 141st meeting, on 1 October 2003, the Ad Hoc Committee approved the draft United Nations Convention against Corruption and decided to submit it to the General Assembly for consideration and action at its fifty-eighth session, in accordance with Assembly resolution 56/260.

91. Also at the same meeting, the Ad Hoc Committee considered a draft resolution submitted by the Chairman, entitled "United Nations Convention against Corruption" (A/AC.261/L.233). The Ad Hoc Committee also had before it proposals and contributions submitted by Governments.

92. At the same meeting, the Ad Hoc Committee approved the draft resolution, as orally amended, on the understanding that the text of the draft resolution would be finalized and submitted to the General Assembly for consideration and action at its fifty-eighth session.

93. The Executive Director of the United Nations Office on Drugs and Crime offered his warm congratulations to the Acting Chairman, the members of the bureau of the Ad Hoc Committee and all the delegations for concluding the negotiations on the draft convention. He noted that, at the beginning of the seventh session, on 29 September, the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I) had entered into force and he had been informed that the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Assembly resolution 55/25, annex II), had received the required number of ratifications and would enter into force on 25 December 2003. The Ad Hoc Committee had added to those successes the approval of the new draft convention by consensus. The new convention would be both balanced and comprehensive and it would establish benchmarks; thus, it would offer good prospects for the fight against corruption. Furthermore, it commanded broad support, as all the regional groups had participated actively in the negotiation process. The Executive Director thanked all those who had contributed to the success of the Ad Hoc Committee. He concluded his statement by reading the following message to the Ad Hoc Committee from the Secretary-General:

> "I am pleased to extend my best wishes and congratulations to the Ad Hoc Committee on the successful conclusion of the negotiation process leading to the United Nations Convention against Corruption. It is particularly heartening that you were able to complete this process in less than two years. I would also like to take this opportunity to pay tribute to the late Ambassador Héctor Charry Samper for his leadership, dedication and expertise in chairing the Committee. He will be greatly missed. This Convention can make a real difference to the quality of life of millions of people around the world. I urge Member States to continue demonstrating their commitment with their signature at the Merida conference in December."

94. The representative of Mexico informed the Ad Hoc Committee of the preparations for the High-level Political Signing Conference, to be held in Merida,

Mexico, from 9 to 11 December 2003, pursuant to General Assembly resolution 57/169. He noted that, in accordance with that resolution, consultations on the draft provisional agenda of the Conference would be organized by the Secretariat in Vienna in October.

95. At the closing of the session, statements were made by the following: the representative of Tunisia, speaking on behalf of the States Members of the United Nations that are members of the Group of African States; the representative of Paraguay, speaking on behalf of the States Members of the United Nations that are members of the Group of Latin American and Caribbean States; the representative of the Syrian Arab Republic, speaking on behalf of the States Members of the United Nations that are members of the Group of Arab States; the representative of Italy, speaking on behalf of the States Members of the United Nations that are members of the European Union, as well as the acceding countries (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) and the associate countries (Bulgaria, Romania and Turkey); the representative of Brazil, speaking on behalf of the States Members of the United Nations that are members of the Group of 77 and China; the representative of Japan, speaking on behalf of the States Members of the United Nations that are members of the Group of Asian States; and the representatives of Algeria, China and the United States of America.

96. The Acting Chairman expressed his appreciation to all delegations for the efforts that they had exerted, which had enabled the Ad Hoc Committee to achieve its goal within the time limit set by the General Assembly. He noted that the new convention would enhance international, regional and national efforts to curb corruption, which posed a threat to national security and stability and undermined respect for the rule of law and the legitimacy of Governments. The members of the Ad Hoc Committee had ample reason to be proud for having completed the negotiation process, which was at times arduous. He urged Governments to continue to demonstrate their commitment to making the convention a reality by ensuring their participation in the High-level Political Signing Conference to be held in Merida in December, in order to ensure a high number of signatories to the new convention.

97. The report of the Ad Hoc Committee on its seventh session appears in document A/AC.261/25.

H. Consistency group

98. The Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime had established a consistency group to ensure the consistency of the draft United Nations Convention against Transnational Organized Crime, together with the draft protocols thereto, in all the official languages of the United Nations. In view of the substantial contribution that that consistency group had made to the negotiation of the United Nations Convention against Transnational Organized Crime and its Protocols (General Assembly resolutions 55/25, annexes II and III, and 55/255, annex), the Ad Hoc Committee for the Negotiation of a Convention against Corruption also decided to establish a consistency group.

99. At the fourth session of the Ad Hoc Committee for the Negotiation of a Convention against Corruption, the Chairman requested all the regional groups to appoint representatives to the consistency group, which would be asked, beginning at the fifth session, to ensure consistency within the text of the draft convention and between all the language versions of the draft convention. In addition, the consistency group recognized the need to review the concordance between articles of the draft convention that contained restatements of provisions of the United Nations Convention against Transnational Organized Crime and the respective articles of that Convention.

100. The composition of the consistency group was as follows: the representatives of Algeria, Cameroon and South Africa, appointed by the Group of African States; the representatives of China and Pakistan, with the representatives of Oman, Saudi Arabia and the Syrian Arab Republic alternating in a third position, appointed by the Group of Asian States; the representatives of Poland and the Russian Federation, appointed by the Group of Eastern European States; the representatives of Colombia and Mexico, appointed by the Group of Latin American and Caribbean States; and the representatives of France and Spain, with the representatives of Australia and the United States alternating in a third position, appointed by the Group of Western European and Other States. Thus, there were members of the consistency group not only from each of the regional groups, but also for each of the official languages of the United Nations. The consistency group was assisted in its work by editors and by translators from the translation section for each official language of the United Nations, as well as by members of the secretariat of the Ad Hoc Committee. The Chairman of the Ad Hoc Committee requested Joel Hernández (Mexico) to act as coordinator of the consistency group.

101. The consistency group held a total of 29 meetings during the fifth, sixth and seventh sessions of the Ad Hoc Committee and reviewed provisions of the draft convention that had been approved by the Ad Hoc Committee.

102. The consistency group kept the Ad Hoc Committee abreast of its work through oral reports by its coordinator at the fifth and sixth sessions and brought to the attention of the Ad Hoc Committee at its seventh session the results of its work, together with recommendations on changes to be made to the draft convention (A/AC.261/24 and Corr.1). The Ad Hoc Committee approved all the recommendations of the consistency group.

IV. Matters calling for action by the General Assembly at its fifty-eighth session

103. The Ad Hoc Committee recommends to the General Assembly the adoption of the following draft resolution and the United Nations Convention against Corruption:

Draft resolution

United Nations Convention against Corruption

The General Assembly,

Recalling its resolution 55/61 of 4 December 2000, in which it established an ad hoc committee for the negotiation of an effective international legal instrument against corruption, and requested the Secretary-General to convene an intergovernmental open-ended expert group to examine and prepare draft terms of reference for the negotiation of such an instrument, and its resolution 55/188 of 20 December 2000, in which it invited the intergovernmental open-ended expert group to be convened pursuant to resolution 55/61 to examine the question of illegally transferred funds and the return of such funds to the countries of origin,

Recalling also its resolutions 56/186 of 21 December 2001 and 57/244 of 20 December 2002 on preventing and combating corrupt practices and transfer of funds of illicit origin and returning such funds to the countries of origin,

Recalling further its resolution 56/260 of 31 January 2002, in which it requested the Ad Hoc Committee for the Negotiation of a Convention against Corruption to complete its work by the end of 2003,

Recalling its resolution 57/169 of 18 December 2002, in which it accepted with appreciation the offer made by the Government of Mexico to host a high-level political conference for the purpose of signing the convention, and requested the Secretary-General to schedule the conference for a period of three days before the end of 2003,

Recalling also Economic and Social Council resolution 2001/13 of 24 July 2001, entitled "Strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, derived from acts of corruption, including the laundering of funds, and in returning such funds",

Expressing its appreciation to the Government of Argentina for hosting the informal preparatory meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption in Buenos Aires in December 2001,

Recalling the Monterrey Consensus,[2] adopted by the International Conference on Financing for Development, held in Monterrey, Mexico, from 18 to 22 March 2002, in which it was underlined that fighting corruption at all levels was a priority,

Recalling also the Johannesburg Declaration on Sustainable Development,[3] adopted by the World Summit on Sustainable Development, held in Johannesburg, South Africa, from 26 August to 4 September 2002, in particular its paragraph 19, in which corruption was declared a threat to the sustainable development of people,

Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,

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[2] *Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002* (United Nations publication, Sales No. E.02.II.A.7), chap. I, resolution 1, annex.

[3] *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August-4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 1, annex.

1. *Takes note* of the report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption,[4] which carried out its work at the headquarters of the United Nations Office on Drugs and Crime in Vienna, in which the Ad Hoc Committee submitted the final text of the draft United Nations Convention against Corruption to the General Assembly for its consideration and action, and commends the Ad Hoc Committee for its work;

2. *Adopts* the United Nations Convention against Corruption annexed to the present resolution, and opens it for signature at the High-level Political Signing Conference to be held in Merida, Mexico, from 9 to 11 December 2003, in accordance with resolution 57/169;

3. *Urges* all States and competent regional economic integration organizations to sign and ratify the United Nations Convention against Corruption as soon as possible in order to ensure its rapid entry into force;

4. *Decides* that, until the Conference of the States Parties to the Convention established pursuant to the United Nations Convention against Corruption decides otherwise, the account referred to in article 62 of the Convention will be operated within the United Nations Crime Prevention and Criminal Justice Fund, and encourages Member States to begin making adequate voluntary contributions to the above-mentioned account for the provision to developing countries and countries with economies in transition of the technical assistance that they might require to prepare for ratification and implementation of the Convention;

5. *Also decides* that the Ad Hoc Committee for the Negotiation of a Convention against Corruption will complete its tasks arising from the negotiation of the United Nations Convention against Corruption by holding a meeting well before the convening of the first session of the Conference of the States Parties to the Convention in order to prepare the draft text of the rules of procedure for the Conference of the States Parties and of other rules described in article 63 of the Convention, which will be submitted to the Conference of the States Parties at its first session for consideration;

6. *Requests* the Conference of the States Parties to the Convention to address the criminalization of bribery of officials of public international organizations, including the United Nations, and related issues, taking into account questions of privileges and immunities, as well as of jurisdiction and the role of international organizations, by, inter alia, making recommendations regarding appropriate action in that regard;

7. *Decides* that, in order to raise awareness of corruption and of the role of the Convention in combating and preventing it, 9 December should be designated International Anti-Corruption Day;

8. *Requests* the Secretary-General to designate the United Nations Office on Drugs and Crime to serve as the secretariat for and under the direction of the Conference of the States Parties to the Convention;

9. *Also requests* the Secretary-General to provide the United Nations Office on Drugs and Crime with the resources necessary to enable it to promote in an effective manner the rapid entry into force of the United Nations Convention against

[4] A/58/422.

Corruption and to discharge the functions of secretariat of the Conference of the States Parties to the Convention, and to support the Ad Hoc Committee in its work pursuant to paragraph 5 above;

10. *Further requests* the Secretary-General to prepare a comprehensive report on the High-level Political Signing Conference to be held in Merida, Mexico, in accordance with resolution 57/169, for submission to the General Assembly at its fifty-ninth session.

Annex

United Nations Convention against Corruption

Preamble

The States Parties to this Convention,

Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,

Concerned also about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering,

Concerned further about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States,

Convinced that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential,

Convinced also that a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively,

Convinced further that the availability of technical assistance can play an important role in enhancing the ability of States, including by strengthening capacity and by institution-building, to prevent and combat corruption effectively,

Convinced that the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law,

Determined to prevent, detect and deter in a more effective manner international transfers of illicitly acquired assets and to strengthen international cooperation in asset recovery,

Acknowledging the fundamental principles of due process of law in criminal proceedings and in civil or administrative proceedings to adjudicate property rights,

Bearing in mind that the prevention and eradication of corruption is a responsibility of all States and that they must cooperate with one another, with the support and involvement of individuals and groups outside the public sector, such as

civil society, non-governmental organizations and community-based organizations, if their efforts in this area are to be effective,

Bearing also in mind the principles of proper management of public affairs and public property, fairness, responsibility and equality before the law and the need to safeguard integrity and to foster a culture of rejection of corruption,

Commending the work of the Commission on Crime Prevention and Criminal Justice and the United Nations Office on Drugs and Crime in preventing and combating corruption,

Recalling the work carried out by other international and regional organizations in this field, including the activities of the African Union, the Council of Europe, the Customs Cooperation Council (also known as the World Customs Organization), the European Union, the League of Arab States, the Organisation for Economic Cooperation and Development and the Organization of American States,

Taking note with appreciation of multilateral instruments to prevent and combat corruption, including, inter alia, the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996,[5] the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997,[6] the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organisation for Economic Cooperation and Development on 21 November 1997,[7] the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,[8] the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999,[9] and the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003,

Welcoming the entry into force on 29 September 2003 of the United Nations Convention against Transnational Organized Crime,[10]

Have agreed as follows:

Chapter I
General provisions

Article 1
Statement of purpose

The purposes of this Convention are:

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[5] See E/1996/99.

[6] *Official Journal of the European Communities*, C 195, 25 June 1997.

[7] See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

[8] Council of Europe, *European Treaty Series*, No. 173.

[9] Ibid., No. 174.

[10] General Assembly resolution 55/25, annex I.

(a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;

(b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;

(c) To promote integrity, accountability and proper management of public affairs and public property.

Article 2
Use of terms

For the purposes of this Convention:

(a) "Public official" shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a "public official" in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, "public official" may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;

(b) "Foreign public official" shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise;

(c) "Official of a public international organization" shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization;

(d) "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

(e) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(f) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(g) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(h) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 23 of this Convention;

(i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

Article 3
Scope of application

1. This Convention shall apply, in accordance with its terms, to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention.

2. For the purposes of implementing this Convention, it shall not be necessary, except as otherwise stated herein, for the offences set forth in it to result in damage or harm to state property.

Article 4
Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Chapter II
Preventive measures

Article 5
Preventive anti-corruption policies and practices

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

Article 6
Preventive anti-corruption body or bodies

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

Article 7
Public sector

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their

functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

Article 8
Codes of conduct for public officials

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

Article 9
Public procurement and management of public finances

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

(a) Procedures for the adoption of the national budget;

(b) Timely reporting on revenue and expenditure;

(c) A system of accounting and auditing standards and related oversight;

(d) Effective and efficient systems of risk management and internal control; and

(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

Article 10
Public reporting

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures

as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

Article 11

Measures relating to the judiciary and prosecution services

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

Article 12

Private sector

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

(a) The establishment of off-the-books accounts;

(b) The making of off-the-books or inadequately identified transactions;

(c) The recording of non-existent expenditure;

(d) The entry of liabilities with incorrect identification of their objects;

(e) The use of false documents; and

(f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

Article 13
Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information;

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or *ordre public* or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

Article 14
Measures to prevent money-laundering

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

(b) To maintain such information throughout the payment chain; and

(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

4. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Chapter III
Criminalization and law enforcement

Article 15
Bribery of national public officials

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Article 16
Bribery of foreign public officials and officials of public international organizations

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Article 17
Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

Article 18
Trading in influence

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

Article 19
Abuse of functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

Article 20
Illicit enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

Article 21
Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

Article 22
Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

Article 23
Laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

Article 24
Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

Article 25
Obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

Article 26
Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 27
Participation and attempt

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

Article 28
Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

Article 29
Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

Article 30
Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(b) Holding office in an enterprise owned in whole or in part by the State.

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

Article 31

Freezing, seizure and confiscation

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

Article 32

Protection of witnesses, experts and victims

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 33

Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

Article 34

Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

Article 35
Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

Article 36
Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

Article 37
Cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

Article 38
Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

Article 39
Cooperation between national authorities and the private sector

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

Article 40
Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

Article 41
Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

Article 42
Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(d) The offence is committed against the State Party.

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Chapter IV
International cooperation

Article 43
International cooperation

1. States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of this Convention. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.

2. In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties.

Article 44
Extradition

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the

request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 45
Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

Article 46
Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures, and freezing;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a *de minimis* nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related

thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting

State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party,

consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 47
Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 48
Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of

the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

Article 49
Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty

of the State Party in whose territory such investigation is to take place is fully respected.

Article 50
Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

Chapter V
Asset recovery

Article 51
General provision

The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

Article 52
Prevention and detection of transfers of proceeds of crime

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of

funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public

officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

Article 53
Measures for direct recovery of property

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

Article 54
Mechanisms for recovery of property through international cooperation in confiscation

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable

basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

Article 55

International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based

issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a *de minimis* value.

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

Article 56
Special cooperation

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

Article 57
Return and disposal of assets

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners,

pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

Article 58

Financial intelligence unit

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

Article 59

Bilateral and multilateral agreements and arrangements

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

Chapter VI
Technical assistance and information exchange

Article 60

Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption. Such training programmes could deal, inter alia, with the following areas:

(a) Effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods;

(b) Building capacity in the development and planning of strategic anti-corruption policy;

(c) Training competent authorities in the preparation of requests for mutual legal assistance that meet the requirements of this Convention;

(d) Evaluation and strengthening of institutions, public service management and the management of public finances, including public procurement, and the private sector;

(e) Preventing and combating the transfer of proceeds of offences established in accordance with this Convention and recovering such proceeds;

(f) Detecting and freezing of the transfer of proceeds of offences established in accordance with this Convention;

(g) Surveillance of the movement of proceeds of offences established in accordance with this Convention and of the methods used to transfer, conceal or disguise such proceeds;

(h) Appropriate and efficient legal and administrative mechanisms and methods for facilitating the return of proceeds of offences established in accordance with this Convention;

(i) Methods used in protecting victims and witnesses who cooperate with judicial authorities; and

(j) Training in national and international regulations and in languages.

2. States Parties shall, according to their capacity, consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programmes to combat corruption, including material support and training in the areas referred to in

paragraph 1 of this article, and training and assistance and the mutual exchange of relevant experience and specialized knowledge, which will facilitate international cooperation between States Parties in the areas of extradition and mutual legal assistance.

3. States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities in international and regional organizations and in the framework of relevant bilateral and multilateral agreements or arrangements.

4. States Parties shall consider assisting one another, upon request, in conducting evaluations, studies and research relating to the types, causes, effects and costs of corruption in their respective countries, with a view to developing, with the participation of competent authorities and society, strategies and action plans to combat corruption.

5. In order to facilitate the recovery of proceeds of offences established in accordance with this Convention, States Parties may cooperate in providing each other with the names of experts who could assist in achieving that objective.

6. States Parties shall consider using subregional, regional and international conferences and seminars to promote cooperation and technical assistance and to stimulate discussion on problems of mutual concern, including the special problems and needs of developing countries and countries with economies in transition.

7. States Parties shall consider establishing voluntary mechanisms with a view to contributing financially to the efforts of developing countries and countries with economies in transition to apply this Convention through technical assistance programmes and projects.

8. Each State Party shall consider making voluntary contributions to the United Nations Office on Drugs and Crime for the purpose of fostering, through the Office, programmes and projects in developing countries with a view to implementing this Convention.

Article 61

Collection, exchange and analysis of information on corruption

1. Each State Party shall consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed.

2. States Parties shall consider developing and sharing with each other and through international and regional organizations statistics, analytical expertise concerning corruption and information with a view to developing, insofar as possible, common definitions, standards and methodologies, as well as information on best practices to prevent and combat corruption.

3. Each State Party shall consider monitoring its policies and actual measures to combat corruption and making assessments of their effectiveness and efficiency.

Article 62

Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption;

(b) To enhance financial and material assistance to support the efforts of developing countries to prevent and fight corruption effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to that account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of corruption.

Chapter VII
Mechanisms for implementation

Article 63
Conference of the States Parties to the Convention

1. A Conference of the States Parties to the Convention is hereby established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation.

2. The Secretary-General of the United Nations shall convene the Conference of the States Parties not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the Conference of the States Parties shall be held in accordance with the rules of procedure adopted by the Conference.

3. The Conference of the States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article, including rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out those activities.

4. The Conference of the States Parties shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles 60 and 62 and chapters II to V of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in corruption and on successful practices for preventing and combating it and for the return of proceeds of crime, through, inter alia, the publication of relevant information as mentioned in this article;

(c) Cooperating with relevant international and regional organizations and mechanisms and non-governmental organizations;

(d) Making appropriate use of relevant information produced by other international and regional mechanisms for combating and preventing corruption in order to avoid unnecessary duplication of work;

(e) Reviewing periodically the implementation of this Convention by its States Parties;

(f) Making recommendations to improve this Convention and its implementation;

(g) Taking note of the technical assistance requirements of States Parties with regard to the implementation of this Convention and recommending any action it may deem necessary in that respect.

5. For the purpose of paragraph 4 of this article, the Conference of the States Parties shall acquire the necessary knowledge of the measures taken by States

Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the States Parties.

6. Each State Party shall provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement this Convention, as required by the Conference of the States Parties. The Conference of the States Parties shall examine the most effective way of receiving and acting upon information, including, inter alia, information received from States Parties and from competent international organizations. Inputs received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered.

7. Pursuant to paragraphs 4 to 6 of this article, the Conference of the States Parties shall establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

Article 64
Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the States Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the States Parties in carrying out the activities set forth in article 63 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the States Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the States Parties as envisaged in article 63, paragraphs 5 and 6, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Chapter VIII
Final provisions

Article 65
Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

2. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption.

Article 66
Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 67
Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from 9 to 11 December 2003 in Merida, Mexico, and thereafter at United Nations Headquarters in New York until 9 December 2005.

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 68
Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the thirtieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

Article 69
Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and transmit it to the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the States Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the States Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 70
Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become

effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

Article 71
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

United Nations A/58/422/Add.1

General Assembly

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Agenda item 110
Crime prevention and criminal justice

Report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on the work of its first to seventh sessions

Addendum

Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Corruption

I. Introduction

1. The present document contains interpretative notes that were discussed by the Ad Hoc Committee for the Negotiation of a Convention against Corruption throughout the process of negotiation of the draft convention. These notes will be included in the official records of the negotiation process, which the Secretariat will prepare in accordance with standard practice. The present document is submitted to the General Assembly for information purposes only; the Ad Hoc Committee took no formal action on these notes and none is expected of the Assembly at its fifty-eighth session.

II. Interpretive notes

Chapter I

Article 2

Subparagraph (a)

2. The *travaux préparatoires* will indicate that the word "executive" is understood to encompass the military branch, where appropriate.

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3. The *travaux préparatoires* will indicate that the term "office" is understood to encompass offices at all levels and subdivisions of government from national to local. In States where subnational governmental units (for example, provincial, municipal and local) of a self-governing nature exist, including States where such bodies are not deemed to form a part of the State, "office" may be understood by the States concerned to encompass those levels also.

4. The *travaux préparatoires* will indicate that, for the purpose of defining "public official", each State Party shall determine who is a member of the categories mentioned in subparagraph (a) (i) of article 2 and how each of those categories is applied.

Subparagraph (b)

5. The *travaux préparatoires* will indicate that the term "foreign country" includes all levels and subdivisions of government, from national to local.

Subparagraph (d)

6. The *travaux préparatoires* will indicate that the phrase "assets of every kind" is understood to include funds and legal rights to assets.

Subparagraph (f)

7. The *travaux préparatoires* will indicate that the word "temporarily" is understood to encompass the concept of renewability.

Article 3

Paragraph 1

8. The *travaux préparatoires* will indicate that the phrase "in accordance with its terms" is not intended to limit the application of mutual legal assistance.

9. The *travaux préparatoires* will indicate that offences established in accordance with the Convention should not be understood to require the adoption of new domestic legislation for the inclusion of an offence under domestic law where a corresponding offence already exists under such law.

Article 4

Paragraph 1

10. The *travaux préparatoires* will indicate that the principle of non-intervention is to be understood in the light of Article 2 of the Charter of the United Nations.

Chapter II

Article 6

11. The *travaux préparatoires* will indicate that the body or bodies referred to in this article may be the same as those referred to in article 36.

Article 7

Paragraph 1

12. The *travaux préparatoires* will indicate that the existence of the systems referred to in paragraph 1 of article 7 shall not prevent States Parties from maintaining or adopting specific measures for disadvantaged groups.

Article 9

Paragraph 1

13. The *travaux préparatoires* will indicate that nothing in paragraph 1 shall be construed as preventing any State Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential interests related to national security.

Article 10

Subparagraph (a)

14. The *travaux préparatoires* will indicate that, regarding the protection of personal information, the use of which is addressed in the Convention, States Parties may be inspired by principles laid down in the guidelines for the regulation of computerized personal data files adopted by the General Assembly in its resolution 45/95 of 14 December 1990.

Article 11

Paragraph 2

15. The *travaux préparatoires* will indicate that reference to similar independence should be understood to include cases where such independence is identical.

Article 13

Paragraph 1

16. The *travaux préparatoires* will indicate that reference to non-governmental organizations and community-based organizations relates to such organizations established or located in the country. This note is intended as an explanation and not as an amendment to paragraph 1.

Subparagraph (d)

17. The *travaux préparatoires* will indicate that the intention behind paragraph 1 (d) is to stress those obligations which States Parties have already undertaken in various international instruments concerning human rights to which they are parties and should not in any way be taken as modifying their obligations.

Article 14

Paragraph 1

Subparagraph (a)

18. The *travaux préparatoires* will indicate that the words "other bodies" may be understood to include intermediaries, which in some jurisdictions may include stockbroking firms, other securities dealers, currency exchange bureaux or currency brokers.

19. The *travaux préparatoires* will indicate that the words "suspicious transactions" may be understood to include unusual transactions that, by reason of their amount, characteristics and frequency, are inconsistent with the customer's business activity, exceed the normally accepted parameters of the market or have no clear legal basis and could constitute or be connected with unlawful activities in general.

Subparagraph (b)

20. The *travaux préparatoires* will indicate that the establishment of a financial intelligence unit called for by this subparagraph is intended for cases where such a mechanism does not yet exist.

Paragraph 4

21. The *travaux préparatoires* will indicate that, during the negotiations, the words "relevant initiatives of regional, interregional and multilateral organizations" were understood to refer in particular to the Forty Recommendations and the Eight Special Recommendations of the Financial Action Task Force on Money Laundering, as revised in 2003 and 2001, respectively, and, in addition, to other existing initiatives of regional, interregional and multilateral organizations against money-laundering, such as the Caribbean Financial Action Task Force, the Commonwealth, the Council of Europe, the Eastern and Southern African Anti-Money-Laundering Group, the European Union, the Financial Action Task Force of South America against Money Laundering and the Organization of American States.

Chapter III

22. The *travaux préparatoires* will indicate that it is recognized that States may criminalize or have already criminalized conduct other than the offences listed in this chapter as corrupt conduct.

Article 16

23. The *travaux préparatoires* will indicate that this article is not intended to affect any immunities that foreign public officials or officials of public international organizations may enjoy in accordance with international law. The States Parties noted the relevance of immunities in this context and encourage public international organizations to waive such immunities in appropriate cases.

Paragraph 1

24. The *travaux préparatoires* will indicate that a statute that defined the offence in terms of payments "to induce a breach of the official's duty" could meet the standard set forth in each of these paragraphs, provided that it was understood that every public official had a duty to exercise judgement or discretion impartially and that this was an "autonomous" definition not requiring proof of the law or regulations of the particular official's country or international organization.

25. The *travaux préparatoires* will indicate that the phrase "the conduct of international business" is intended to include the provision of international aid.

Paragraph 2

26. The *travaux préparatoires* will indicate that negotiating delegations considered it quite important that any State Party that had not established this offence should, insofar as its laws permitted, provide assistance and cooperation with respect to the investigation and prosecution of this offence by a State Party that had established it in accordance with the Convention and avoid, if at all possible, allowing technical obstacles such as lack of dual criminality to prevent the exchange of information needed to bring corrupt officials to justice.

27. The *travaux préparatoires* will indicate that the word "intentionally" was included in this paragraph primarily for consistency with paragraph 1 and other provisions of the Convention and is not intended to imply any weakening of the commitment contained in paragraph 2, as it is recognized that a foreign public official cannot "unintentionally" solicit or accept a bribe.

28. The *travaux préparatoires* will indicate that paragraph 1 requires that States Parties criminalize active bribery of foreign public officials and paragraph 2 requires only that States Parties "consider" criminalizing solicitation or acceptance of bribes by foreign officials in such circumstances. This is not because any delegation condoned or was prepared to tolerate the solicitation or acceptance of such bribes. Rather, the difference in degree of obligation between the two paragraphs is due to the fact that the core conduct addressed by paragraph 2 is already covered by article 15, which requires that States Parties criminalize the solicitation and acceptance of bribes by their own officials.

Article 17

29. The *travaux préparatoires* will indicate that this article is not intended to require the prosecution of *de minimis* offences.

30. The *travaux préparatoires* will indicate that the term "diversion" is understood in some countries as separate from "embezzlement" and "misappropriation", while in others "diversion" is intended to be covered by or is synonymous with those terms.

Article 19

31. The *travaux préparatoires* will indicate that this article may encompass various types of conduct such as improper disclosure by a public official of classified or privileged information.

Article 23

32. The *travaux préparatoires* will indicate that money-laundering offences established in accordance with this article are understood to be independent and autonomous offences and that a prior conviction for the predicate offence is not necessary to establish the illicit nature or origin of the assets laundered. The illicit nature or origin of the assets and, in accordance with article 28, any knowledge, intent or purpose may be established during the course of the money-laundering prosecution and may be inferred from objective factual circumstances.

Article 27

Paragraph 1

33. The *travaux préparatoires* will indicate that the formulation of paragraph 1 was intended to capture different degrees of participation, but was not intended to create an obligation for States Parties to include all of those degrees in their domestic legislation.

Article 30

Paragraph 2

34. The *travaux préparatoires* will indicate the understanding that the appropriate balance referred to in this paragraph would be established or maintained in law and in practice.

Paragraph 4

35. The *travaux préparatoires* will indicate the understanding that the expression "pending trial" is considered to include the investigation phase.

Article 31

Paragraph 5

36. The *travaux préparatoires* will indicate that this provision is intended as a minimum threshold and that States Parties would be free to go beyond it in their domestic legislation.

Article 35

37. The *travaux préparatoires* will indicate that the expression "entities or persons" is deemed to include States, as well as legal and natural persons.

38. The *travaux préparatoires* will indicate that this article is intended to establish the principle that States Parties should ensure that they have mechanisms permitting persons or entities suffering damage to initiate legal proceedings, in appropriate circumstances, against those who commit acts of corruption (for example, where the acts have a legitimate relationship to the State Party where the proceedings are to be brought). While article 35 does not restrict the right of each State Party to determine the circumstances under which it will make its courts available in such cases, it is also not intended to require or endorse the particular choice made by a State Party in doing so.

Article 36

39. The *travaux préparatoires* will indicate that the body or bodies referred to in this article may be the same as those referred to in article 6.

Article 41

40. The *travaux préparatoires* will indicate that the term "conviction" should be understood to refer to a conviction no longer subject to appeal.

Article 42

Paragraph 1

Subparagraph (a)

41. The *travaux préparatoires* will reflect the understanding that the offence might be committed in whole or in part in the territory of the State Party.

Chapter IV

Article 46

Paragraph 9

Subparagraph (b)

42. The *travaux préparatoires* will indicate that the requested State Party would define "coercive action", taking into account the purposes of the Convention.

Paragraph 19

43. The *travaux préparatoires* will reflect the understanding that the requesting State Party would be under an obligation not to use any information received that was protected by bank secrecy for any purpose other than the proceedings for which that information was requested, unless authorized to do so by the requested State Party.

Paragraph 28

44. The *travaux préparatoires* will indicate that many of the costs arising in connection with compliance with requests made pursuant to article 46, paragraphs 10, 11 and 18, would generally be considered extraordinary in nature. Further, the *travaux préparatoires* will also indicate the understanding that developing countries might encounter difficulties in meeting even some ordinary costs and should be provided with appropriate assistance to enable them to meet the requirements of this article.

Article 48

Paragraph 1

Subparagraph (b) (i)

45. The *travaux préparatoires* will indicate that the term "identity" should be understood to include such features or other pertinent information as might be necessary to establish a person's identity.

Subparagraph (d)

46. The *travaux préparatoires* will indicate that this subparagraph does not imply that the type of cooperation described therein would not be available under the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I).

Paragraph 3

47. The *travaux préparatoires* will indicate that, in considering a proposal made by Chile for a provision on jurisdiction and cooperation with regard to offences committed through the use of computer technology (A/AC.261/L.157 and Corr.1), there was general understanding that article 42, paragraph 1 (a), already covered the exercise of jurisdiction over offences established in accordance with the Convention that were committed using computers if all other elements of the offence were met, even if the effects of the offence occurred outside the territory of a State Party. In that regard, States Parties should also keep in mind the provisions of article 4 of the Convention. The second part of the proposal of Chile suggested that States Parties should note the possible advantage of using electronic communications in exchanges arising under article 46. That proposal noted that States Parties might wish to consider the use of electronic communications, when feasible, to expedite mutual legal assistance. However, the proposal also noted that such use might raise certain risks regarding interception by third parties, which should be avoided.

Chapter V

Article 51

48. The *travaux préparatoires* will indicate that the expression "fundamental principle" would not have legal consequences on the other provisions of this chapter.

Article 52

Paragraph 1

49. The *travaux préparatoires* will indicate that paragraphs 1 and 2 should be read together and that the obligations imposed on financial institutions may be applied and implemented with due regard to particular risks of money-laundering. In that regard, States Parties may guide financial institutions on appropriate procedures to apply and whether relevant risks require application and implementation of these provisions to accounts of a particular value or nature, to its own citizens as well as to citizens of other States and to officials with a particular function or seniority. The relevant initiatives of regional, interregional and multilateral organizations against

money-laundering shall be those referred to in the note to article 14 in the *travaux préparatoires*.

50. The *travaux préparatoires* will indicate that the term "close associates" is deemed to encompass persons or companies clearly related to individuals entrusted with prominent public functions.

51. The *travaux préparatoires* will indicate that the words "discourage or prohibit financial institutions from doing business with any legitimate customer" are understood to include the notion of not endangering the ability of financial institutions to do business with legitimate customers.

Paragraph 2

Subparagraph (a)

52. The *travaux préparatoires* will indicate that the obligation to issue advisories may be fulfilled by the State Party or by its financial oversight bodies.

Paragraph 3

53. The *travaux préparatoires* will indicate that this paragraph is not intended to expand the scope of paragraphs 1 and 2 of this article.

Paragraph 4

54. The *travaux préparatoires* will indicate that the term "physical presence" is understood to mean "meaningful mind and management" located within the jurisdiction. The simple existence of a local agent or low-level staff would not constitute physical presence. Management is understood to include administration, that is, books and records.

55. The *travaux préparatoires* will indicate that banks that have no physical presence and are not affiliated with a regulated financial group are generally known as "shell banks".

Article 53

Subparagraph (c)

56. The *travaux préparatoires* will indicate that, during the consideration of this paragraph, the representative of the Office of Legal Affairs of the Secretariat drew the attention of the Ad Hoc Committee to the proposal submitted by his Office, together with the Office of Internal Oversight Services and the United Nations Office on Drugs and Crime (see A/AC.261/L.212) to include in this paragraph a reference to the recognition of the claim of a public international organization in addition to the recognition of the claim of another State Party. Following discussion of the proposal, the Ad Hoc Committee decided not to include such a reference, based upon the understanding that States Parties could, in practice, recognize the claim of a public international organization of which they were members as the legitimate owner of property acquired through conduct established as an offence in accordance with the Convention.

Article 54

Paragraph 1

Subparagraph (a)

57. The *travaux préparatoires* will indicate that the reference to an order of confiscation in paragraph 1 (a) of this article may be interpreted broadly, as including monetary confiscation judgements, but should not be read as requiring enforcement of an order issued by a court that does not have criminal jurisdiction.

Subparagraph (b)

58. The *travaux préparatoires* will indicate that paragraph 1 (b) of this article shall be interpreted as meaning that the obligation contained in this provision would be fulfilled by a criminal proceeding that could lead to confiscation orders.

Subparagraph (c)

59. The *travaux préparatoires* will indicate that, in the context of paragraph 1 (c) of this article, the term "offender" might in appropriate cases be understood to include persons who may be title holders for the purpose of concealing the identity of the true owners of the property in question.

Paragraph 2

Subparagraph (a)

60. The *travaux préparatoires* will indicate that the term "sufficient grounds" used in paragraph 2 (a) of this article should be construed as a reference to a prima facie case in countries whose legal systems employ this term.

61. The *travaux préparatoires* will indicate in relation to paragraph 2 (a) of this article that a State Party may choose to establish procedures either for recognizing and enforcing a foreign freezing or seizure order or for using a foreign freezing or seizure order as the basis for seeking the issuance of its own freezing or seizure order. Reference to a freezing or seizure order in paragraph 2 (a) of this article should not be construed as requiring enforcement or recognition of a freezing or seizure order issued by an authority that does not have criminal jurisdiction.

Article 55

62. The *travaux préparatoires* will indicate that references in this article to article 31, paragraph 1, should be understood to include reference to article 31, paragraphs 5-7.

Paragraph 1

63. The *travaux préparatoires* will indicate that the term "instrumentalities" should not be interpreted in an overly broad manner.

Paragraph 3

Subparagraph (a)

64. The *travaux préparatoires* will indicate that the statement of facts may include a description of the illicit activity and its relationship to the assets to be confiscated.

Paragraph 7

65. The *travaux préparatoires* will reflect the understanding that the requested State Party will consult with the requesting State Party on whether the property is of *de minimis* value or on ways and means of respecting any deadline for the provision of additional evidence.

Article 57

Paragraph 1

66. The *travaux préparatoires* will indicate that prior legitimate ownership will mean ownership at the time of the offence.

Paragraph 2

67. The *travaux préparatoires* will indicate that return of confiscated property may in some cases mean return of title or value.

68. The *travaux préparatoires* will indicate that the domestic law referred to in paragraph 1 and the legislative and other measures referred to in paragraph 2 would mean the national legislation or regulations that enable the implementation of this article by States Parties.

Paragraph 3

Subparagraphs (a) and (b)

69. The *travaux préparatoires* will indicate that subparagraphs (a) and (b) of paragraph 3 of this article apply only to the procedures for the return of assets and not to the procedures for confiscation, which are covered in other articles of the Convention. The requested State Party should consider the waiver of the requirement for final judgement in cases where final judgement cannot be obtained because the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

Paragraph 4

70. The *travaux préparatoires* will indicate that "reasonable expenses" are to be interpreted as costs and expenses incurred and not as finders' fees or other unspecified charges. Requested and requesting States Parties are encouraged to consult on likely expenses.

Article 58

71. The *travaux préparatoires* will indicate that each State Party may consider creating a new financial intelligence unit, establishing a specialized branch of an existing financial intelligence unit or simply using its existing financial intelligence

unit. Further, the *travaux préparatoires* will indicate that this article should be interpreted in a manner consistent with paragraph 1 (b) of article 14 of the Convention.

Chapter VI

Article 62

Paragraph 2

Subparagraph (c)

72. The *travaux préparatoires* will indicate that this subparagraph is not intended to prejudice the application of article 57.

Chapter VII

Article 63

Paragraph 3

73. The *travaux préparatoires* will indicate that financing should not be linked to the recovery of assets.

Paragraph 7

74. The *travaux préparatoires* will indicate that nothing in this paragraph is intended to limit the discretion of the Conference of the States Parties as the only forum competent to consider whether the mechanism or body to assist in the effective implementation of the Convention is necessary.

Chapter VIII

Article 67

Paragraph 2

75. The *travaux préparatoires* will indicate that "regional economic integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to "States Parties" under the Convention shall apply to such organizations within the limits of their competence.